



July 9, 1999

Mr. Frank M. Crull
Assistant General Counsel
Texas Department of Public Safety
5805 N. Lamar Boulevard
Austin, Texas 78773-0001

OR99-1914

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under the Public Information Act ("the act"), chapter 552 of the Government Code. Your request was assigned ID# 125614.

The Texas Department of Public Safety (the "department") received a request for several types of criminal history record information ("CHRI") as well as, information relating to the requestor. You state that you have released some of the responsive information. You claim, however, that records relating to misdemeanor deferred adjudications, and deferred adjudications dismissed under section 5(c) of article 42.12 of the Code of Criminal Procedure are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. The section also encompasses information protected by other statutes. Section 411.083 of the Government Code provides that any CHRI maintained by the department is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the department pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). You assert that the requestor seeks information which is not required to be released under section 411.135 of the Government Code. Section 411.135 provides in relevant part as follows:

(a) a person is entitled to obtain from the department:

(1) any information described as public information under Section 5, Article 6252-13c.1, Revised Statutes; and

(2) criminal history record information maintained by the department that is a court record of a public judicial proceeding and that relates to:

(A) the conviction of a person for any criminal offense; or

(B) a grant of deferred adjudication to a person charged with a felony offense.

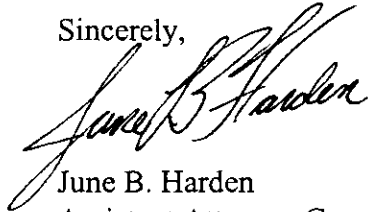
The requestor seeks the criminal record of any person, who after being sentenced to deferred adjudication, had his deferred adjudication dismissed in accordance with section 5(c) of article 41.12 of the Code of Criminal Procedure. You explain that this request encompasses misdemeanor deferred adjudication records as well. You argue that since section 411.135 does not provide for the release of these types of records, these records are confidential under section 411.083 of the Code of Criminal Procedure. We agree. Section 411.135 only provides for the release of felony deferred adjudication records. Thus, records relating to misdemeanor deferred adjudications are protected from disclosure under section 552.101 and must not be released to the requestor.

You also argue that records relating to dismissed deferred adjudications are not required to be released under section 411.135 “because these records do not relate to either a conviction, as the cases do not become adjudicated, nor do they relate to a grant of deferred adjudication because there is no longer a deferred adjudication upon dismissal.” We note that section 411.135 provides for the release of CHRI that relates to a *grant* of deferred adjudication to a person charged with a felony offense. Based on a review of the statute and your arguments, we must conclude that if a deferred adjudication has been dismissed, a deferred adjudication must have been granted by the court. Therefore, regardless of the final disposition, the requested felony deferred adjudication records must be released pursuant to section 411.135.

Finally, you express concern that the retrieval and inspection of the requested items will place an extreme burden on the department. The department may not deny a request simply because providing the requested information is burdensome. The act does provide, however, that governmental bodies may promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay. Gov’t Code § 552.230. We also suggest that you contact the Open Records Administrator for the General Services Commission to resolve any cost related issues. See Gov’t Code §§ 552.261-.273.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly legible.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 125614

Encl. Submitted documents

cc: Mr. William L. Castle
156 Rusty Lane
Waxahachie, Texas 75165
(w/o enclosures)